

E-filed February 16, 2021

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

IN RE:

MARGARET LESLIE CANTLON, aka  
Cindy Cantlon, Mrs. William McKean  
Cantlon

Debtor in Possession

MARGARET LESLIE CANTLON, aka  
Cindy Cantlon, Mrs. William McKean  
Cantlon and MARGARET LESLIE  
CANTLON, Trustee of the WILLIAM and  
MARGARET CANTLON FAMILY  
TRUST dated March 7, 2000,

Plaintiffs,

vs

WELLS FARGO & COMPANY, WELLS  
FARGO BANK N.A. and WELLS FARGO  
ADVISORS, LLC

Defendants.

Case No: BK-15-50292-btb  
Chapter 11

Adv. No. 18-05006-GWZ

**PLAINTIFFS'  
SUPPLEMENTAL BRIEF IN  
OPPOSITION TO MOTION  
TO DISMISS AMENDED  
COMPLAINT**

HEARING DATE:  
Hearing Time:  
Est. Time: \_\_ Minutes

1 Plaintiffs, Margaret Leslie Cantlon, Debtor in Possession, and Margaret Leslie  
2 Cantlon, trustee of the William and Margaret Cantlon Family Trust dated March 7,  
3 2000 ("Margaret"), by counsel, submit their Supplemental Brief ("Brief"), as ordered  
4 by the Court, in opposition to the second Motion To Dismiss ("Motion") filed by De-  
5 fendants, WELLS FARGO & COMPANY, WELLS FARGO BANK N.A., and WELLS  
6 FARGO ADVISORS, LLC. (collectively "Wells Fargo"), and submit the following Points  
7 and Authorities.

## 8 POINTS AND AUTHORITIES

### 9 **CURRENT STATUS**

10  
11 The Nevada Supreme Court issued its advisory opinion on November 20, 2020, declar-  
12 ing that NRS 11.290, a Nevada statute of limitation specific to recovery of bank de-  
13 posits, is not as specific as the various general limitations at NRS 11.190. That opinion  
14 in effect nullifies NRS 11.290. Should the Court accept the advisory opinion and rule  
15 that NRS 11.290 does not apply to Margaret's claims for relief, then the Court should  
16 address Margaret's arguments about application of the discovery rule, equitable estop-  
17 pel, and turnover.

18 This action began on March 7, 2018. On October 29, 2018, Margaret filed her  
19 Amended Complaint pursuant to the Court's grant of leave to amend. On February  
20 21, 2019, the Court conducted an additional hearing this time on Wells Fargo's second  
21 motion to dismiss ("Motion"). The result of that hearing was a certification order to the  
22 Nevada Supreme Court on March 27, 2019 requesting an advisory opinion concerning  
23 NRS 11.290.

24 Subsequent to the Nevada Supreme Court opinion, the Bankruptcy Court held a  
25 status conference telephone hearing on January 26, 2021. Supplemental briefing on  
26 the outstanding Motion was scheduled. A general principle of law applies to consider-  
27 ation of the Motion, which is that:

28 Dismissal on statute of limitations grounds is only appropriate 'when

1 uncontroverted evidence irrefutably demonstrates plaintiff discovered or  
2 should have discovered' the facts giving rise to the cause of action. *Nevada*  
3 *Power Co. v. Monsanto Co.*, 955 F.2d 1304, 1307 (9th Cir. 1992).

4 *Baroi v. Platinum Condo. Dev., LLC*, 914 F. Supp. 2d 1179, 1199 (D. Nev. 2012).

## 5 **THE AMENDED COMPLAINT AND SECOND MOTION TO DISMISS**

6 Margaret's Amended Complaint seeks to recover investment and customer deposits  
7 taken by Wells Fargo/Wachovia bank and investment advisory employees, who were  
8 incited by discredited and double-dealing profit motives, and equipped with corrupted  
9 internal systems. The Amended Complaint contains ten claims for relief, including  
10 three federal statute claims. Number seven is the federal Electronic Funds Transfers  
11 Act, which has a one-year statute of limitations applied. Numbers five and six (neg-  
12 ligent hiring and violation of privacy) have two-year statutes of limitations. All other  
13 claims for relief have statutes of limitations of three years or more.

14 The Amended Complaint lays out specific facts and vivid details about the abuse  
15 and conversion committed against Margaret, and for purposes of this motion, they  
16 are taken as true. Also, for purposes of this Motion, Wells Fargo was duty bound to  
17 discover and disclose to Margaret the many red flags of very improper investment and  
18 banking activities occurring over the years. *Id.* Margaret detrimentally relied upon  
19 Wells Fargo's special institutional and expert position.

20 Wells Fargo argues that the various statutes of limitations have all expired because  
21 Margaret took back control of her finances in late 2012. Wells Fargo fails to explain  
22 how an elderly widow suddenly becomes an astute analyst of not only her current  
23 finances but the prior six years worth, with scant records in disarray and Wells Fargo  
24 suppressing facts about its schemes.

25 The Motion hinges, however, on Margaret's May 29, 2015 disclosure statements  
26 filed in her bankruptcy case, in which she speaks about Wells Fargo. While mak-  
27 ing much ado about Margaret controlling her finances, the Motion's reliance on the  
28 May 2015 disclosure statements reveals the fact that no evidence exists to date, par-

1 ticularly within the four corners of the Amended Complaint, that Margaret had any  
 2 pre-2015 specific knowledge of Wells Fargo's role and machinations in the loss of her  
 3 deposits. Perhaps the reason why is because evidence was suppressed. Wells Fargo's  
 4 deflection onto Margaret's son as the key player in her losses conveniently omits the  
 5 role of other bank agents, and suppresses the central truth about perverted profit  
 6 motives and systems developed and enforced by Wells Fargo that enabled advisory  
 7 employees and bank managers like Margaret's son.

8 Nevertheless, the applicable statutes of limitations are all subject to the discovery  
 9 rule and, under Margaret's circumstances, they are tolled. Assuming arguendo, that  
 10 her May 2015 disclosure statements constitute evidence of adequate knowledge of the  
 11 facts and specific causes of Margaret's losses to trigger any limitations, then mathe-  
 12 matically the only limitations to have expired prior to the filing of the Complaint on  
 13 March 7, 2018, is the two-year statute of limitations.

14 Wells Fargo's application of the bankruptcy two-year statute of limitation at 11  
 15 U.S.C. §108(a) actually favors Margaret because unexpired Nevada statutes of limi-  
 16 tations exist. The three-year and four-year statutes were not triggered prior to May  
 17 2015 at the earliest.

18 Wells Fargo also attacks Margaret's seventh claim for relief, the federal Electronic  
 19 Funds Transfers Act, and her turnover claim and her equitable estoppel argument.  
 20 Those are discussed later below, but it is indisputable under the law that a converter  
 21 [thief] never acquires title and thus cannot validly transfer. Wells Fargo enabled; it  
 22 stole.<sup>1</sup>

### 23 **LAW: LIMITATIONS ARE TOLLED.**

24 Margaret must not ". . . be foreclosed from judicial remedies before they know that  
 25 they have been injured and can discover the cause of their injuries." *Bemis v. Estate*

26  
 27 <sup>1</sup> "Did Wells Fargo employees steal from a million to two million of their customers? Yes or no?" Wells  
 28 Fargo CEO John Stumpf replied: "In some cases they did." See Representative Sean Duffy's exchange  
 with Mr. Stumpf on September 29, 2016, at <https://www.c-span.org/video/?415981-1/ceo-john-stumpf-testifies-unauthorized-wells-fargo-accounts>, from 1:14: 44-1-1:20:17. Margaret was one of those cus-  
 tomers.

1 of *Bemis*, 114 Nev. 1021, 967 P.2d 437, 440 (Nev. 1998) [emphasis added] (beneficiary  
 2 action against estate to recover trust asset lost in the deceased's old divorce). A statute  
 3 of limitation could not have commenced prior to Margaret acquiring adequate knowl-  
 4 edge of more than just a hope and prayer of some fraudulent action against her son  
 5 and Wells Fargo. And, her diligence is a question of fact. *Baroi v. Platinum Condo.*  
 6 *Dev., LLC*, 914 F. Supp. 2d 1179, 1199 (D. Nev. 2012).

7 Moreover, "[w]e have held that when a party who is relied upon in a fiduciary capac-  
 8 ity [e.g., Margaret's investment advisors] fails to fulfill his obligations thereunder, and  
 9 does not tell the other party of his failure, his omission constitutes constructive fraud,  
 10 tolling the statute of limitations until the facts constituting the fraud are discovered,  
 11 or should have been discovered, by the injured party. *Allen v. Webb*, 87 Nev. 261, 485  
 12 P.2d 677 (1971)." *Golden Nugget, Inc. v. Ham*, 95 Nev. 45, 48, 589 P.2d 173 (1973)  
 13 (emphasis added) (corporate director who also served as corporate attorney failed to  
 14 disclose personal real estate deal).

15 The little evidence surrounding Margaret's discovery and its meaning at this stage  
 16 is in dispute and should not be considered irrefutable demonstration of her adequate  
 17 knowledge of facts in support of the elements of appropriate claims for relief. There  
 18 is no clarity about, but rather deep issues of fact concerning when Margaret knew  
 19 or should have known that a giant bank's systems and management could allow and  
 20 incite internal serial invasions and violations of personal identity and of accounts in  
 21 both the investment brokerage side and in the consumer banking side over prolonged  
 22 time without noticing all of the red flags and speaking directly with the customer.

23 Wells Fargo concedes that Margaret's claims for relief numbers 2, 3, 4, and 9 have  
 24 statutes of limitations that are subject to the discovery rule. Motion 10:3-4 and its  
 25 Exhibit 1. Those concern fiduciary duty, Nevada's Deceptive Trade Practices Act, con-  
 26 fidential relationship, and conversion. Margaret submits that her first claim for relief  
 27 for elder exploitation, her fifth claim for relief for negligent hiring, retention and su-  
 28 pervision of certain employees, her sixth claim for relief for violations of expectation of



1 privacy, and her seventh claim for relief for violations of the federal “Electronic Funds  
2 Transfer Act,” all have a reasonable, ethical basis in law for the proper extension of  
3 their applicable statutes of limitation under the discovery rule.

4 The elder exploitation statute at NRS 11.190(3)(a), and the limitations statute con-  
5 cerning negligence actions at NRS 11.190(4)(e), do not define when a cause of action  
6 accrues. “In dealing with statutes that do not specify when a cause of action accrues,  
7 we have held that the discovery rule would apply.” See, *Oak Grove Inv. v. Bell &*  
8 *Gossett Co.*, 99 Nev. 616, 622-23, 668 P.2d 1075, 1079 (1983) (holding that where the  
9 ‘catch all’ statute of limitations, NRS 11.220, was silent as to time of accrual, the dis-  
10 covery rule would apply). Likewise, an extension under the discovery rule of the one  
11 year statute of limitation in the federal Electronic Funds Transfer Act is appropriate.  
12 The federal courts that have attempted to address a discovery rule application to this  
13 one-year limitation defer to the ruling in a Sixth Circuit appellate decision:

14 Must a consumer know that a noncompliant transfer has occurred before  
15 the limitations clock starts? Although EFTA’s other provisions reduce the  
16 risk that a consumer will remain ignorant of such transfers, see, e.g., id.  
17 §1693d(c)(1), 1693f(f)(3), it does not say whether a consumer who receives  
18 delayed notice of a noncompliant transfer can sue once the one-year win-  
19 dow has closed. Whether EFTA incorporates a discovery rule or permits  
20 equitable tolling are matters for another day.

21 *Wike v. Vertrue*, 566 F.3d 590, 596 (6th Cir. 2009) (emphasis added). “Another day”  
22 is at hand. A consumer like Margaret should receive disclosure of a noncompliant  
23 transfer before the limitations clock starts. Otherwise, untimely disclosure or nondis-  
24 closure can force a limitation into an abolition. And no evidence exists that Margaret  
25 possessed adequate knowledge of illegal electronic transfers prior to March 7, 2017.

#### 26 **LAW: EQUITABLE ESTOPPEL PREVENTS**

27 Margaret submits that Wells Fargo’s conduct and special position in relationship to  
28 her requires that it be estopped from asserting the defense of the statute limitations.  
“An estoppel to set up the defense of the statute of limitations arises as a result of  
some conduct by the defendant, relied upon by the plaintiff, that induces the belated

1 filing of the action.” 3 Witkin, *Cal. Procedure* (5th ed. 2008) Actions, § 762, p. 993.  
2 “Equitable estoppel operates to prevent a party from asserting legal rights that, in  
3 equity and good conscience, they should not be allowed to assert because of their con-  
4 duct. *United Brotherhood v. Dahnke*, 102 Nev. 20, 22, 714 P.2d 177, 178-179 (1986).”  
5 *Nevada State Bank v. Jamison Family Partnership*, 801 P.2d 1377, 1382, 106 Nev. 792,  
6 800 (Nev.1990) (statute of limitations against the bank was not estopped). Silence can  
7 raise estoppel. *NGA No. 2 Ltd. Liability Co. v. Rains*, 113 Nev. 1151, 946 P.2d 163  
8 (1997); *Vancheri v. GNLV. Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 369 (1989).

9 Wells Fargo and Wachovia cultivated and enjoyed a very special fiduciary and in-  
10 vestment advisory and banking relationship with Margaret for more than 50 years,  
11 and particularly so after Margaret was widowed. Indeed, Wells Fargo was the one in  
12 best position to discover and disclose problems. Cf., *McIntosh v. Jack Matthews and*  
13 *Company*, 109 Nev. 628, 632-36, 855 P.2d 549, 551-54 (1993). When a fiduciary fails  
14 to disclose his misconduct, “his omission constitutes constructive fraud, tolling the  
15 statute of limitations until the facts constituting the fraud are discovered, or should  
16 have been discovered, by the injured party. [Emphasis added] *Allen v. Webb*, 87 Nev.  
17 261, 485 P.2d 677 (1971).” *Golden Nugget, Inc. v. Ham*, 95 Nev. 45, 48, 589 P.2d  
18 173 (1973) (corporate director who also served as corporate attorney failed to disclose  
19 personal real estate deal).

20 So, taking Margaret’s allegations in the Amended Complaint as true for purposes  
21 of this Motion, it is true that Wells Fargo and its employees abused Margaret and that  
22 she detrimentally relied upon Wells Fargo’s special institutional and expert position.  
23 And, for purposes of this Motion, Wells Fargo was duty bound to discover and disclose  
24 to Margaret the many red flags of very improper investment and banking activities oc-  
25 ccurring over the years. Id. Margaret submits that but for Wells Fargo’s machinations  
26 and internal domination of records and information, she could have reacted sooner  
27 rather than so late. Margaret requests that Wells Fargo be estopped from asserting  
28 the defense of the statute limitations.

1 **LAW: TURNOVER**

2 The bank admits in its discussion of turnover in its Motion to Dismiss Amended Com-  
3 plaint (page 19) that there is no statute of limitation for turnover actions. But Wells  
4 Fargo alleges that laches could apply. (see footnote 14 on the same page).

5  
6 Generally, when an action is not subject to a statute of limitations, the  
7 equitable doctrine of laches may alternatively limit the time within which  
8 the action must be brought.

9 . . .  
10 To succeed on its affirmative defense of laches, CBIC was required to  
11 present evidence of an inexcusable delay in the exercise of a known right,  
12 and that it was thereby prejudiced.

13 *Shook v. CBIC (In re Shook)*, 278 B.R. 815, 829 (B.A.P. 9th Cir. 2002). In other words,  
14 more than mere lapse of time is necessary to show laches. *Golden Door, Inc. v. Odisho*,  
15 437 F. Supp. 956, 968 (N.D. Cal. 1977).

16 Margaret's delay, if any, is excusable in a court of equity because of Wells Fargo's  
17 suppression of evidence and Margaret's inability to obtain counsel.

18 **Property of the estate issues §542(a)**

19 . . . §542(a) works within the bankruptcy process to draw far-flung  
20 estate property back into the hands of the debtor or trustee. . .

21 *City of Chi. v. Fulton*, 141 S. Ct. 585, 208 L. Ed. 2d 384, 390 (2021)

22 Margaret asserts that Wells Fargo owes her substantial monies. Wells Fargo as-  
23 serts that Turnover of those monies will not lie because the complaint alleges that  
24 the property had been allegedly dissipated by Wells Fargo's employees long before the  
25 Petition date (March 5, 2015). See Amended Complaint, beginning at paragraph 25.  
26 Wells Fargo does not dwell on the fact that one of these bank employees was Mar-  
27 garet's son. See Second Amended Disclosure Statement, page 4, line 20 (filed in the  
28 main case on January 31, 2018).

Wells Fargo cites to *In re Bruner*, 561 B.R. 397 and *In re Teligent, Inc.*, 325 B.R. 134  
(Motion to Dismiss Amended Complaint, p. 17) to the effect that Margaret must first



1 recover the assets before seeking turnover, but that begs the question. Wells Fargo  
 2 may have lost its assets, but not Margaret's, as the bank remains an obligor to her. An  
 3 embezzling bank employee, however successful, does not deplete the depositor's funds.

4 Wells Fargo, however indirectly, essentially adopts Judge Markel's conclusion that  
 5 funds on deposit belong to Wells Fargo, with Margaret only possessing an account  
 6 receivable. *In re Nat'l Audit Def. Network*, 332 B.R. 896, 909. See also *Citizens Bank*  
 7 *v. Strumpf*, 516 U.S. 16, 21 (J Scalia). However this may be at Federal law, it elevates  
 8 form over substance, when applied to 542(a) or to Nevada law, which informally at  
 9 least recognizes the common understanding that bank deposits are property of the  
 10 customer. See e.g. NRS 11.290 (" . . . actions brought to recover money or other  
 11 property deposited with any bank . . . "; *Grimes v. Grimes*, 52 F.2d 171, 178 (D. Nev.  
 12 1931) ". . . deposit in its savings account in the name of the clerk of this court all  
 13 money derived from such sale. . . "; *Edmonds v. Perry*, 62 Nev. 41, 46, 140 P.2d  
 14 566, 569 (1943) "Generally, the law presumes that a bank deposit belongs to person in  
 15 whose name it is entered, . . .".

16 To allow Debtor to gain refuge behind Rule 4003(b) when he amended  
 17 his financial statement in response to Trustee's objections would be to ele-  
 18 vate form over substance. We cannot countenance such a wooden applica-  
 19 tion of the Bankruptcy Rules.

20 *Wharton v. Schwartzer (In re Wharton)*, 563 B.R. 289, 296 (B.A.P. 9th Cir. 2017).

21 We agree with the bankruptcy court. SMDI's counsel acknowledged at  
 22 oral argument that it would have been "entirely appropriate" if the Trustee  
 23 had litigated the Adversary Proceeding to completion, obtained the Domain  
 24 Name, and then auctioned it off to the highest bidder and distributed the  
 25 proceeds to unsecured creditors. Adv. App., Oral Argument at 8:27-8:51.  
 26 The Trustee's ability to do so, however, was jeopardized by the costliness  
 27 and complexity of the litigation and the estate's lack of resources. Early  
 28 on, the Trustee recognized that he could best serve the estate's creditors by  
 selling the estate's interests in the Domain Name; he then did so with the  
 bankruptcy court's approval. The prospect of a successful recovery on the  
 estate's § 542(a) claim thus translated into a direct and immediate benefit  
 for the unsecured creditors. To ignore this benefit would be to elevate form  
 over substance. We do not think Congress intended to punish a party in

ConsumerInfo's position with a forfeiture for having provided consideration in a manner that made it more likely that "the plan w[ould] achieve its intended results which are consistent with the purposes of the Bankruptcy Code."

*In re Paige*, 685 F.3d 1160, 1193 (10th Cir. 2012) (a 542(a) case).

#### **Disputed amount issues §542(b)**

Article VII of her confirmed Plan authorizes Margaret to liquidate the estate's claim against Wells Fargo, as required by § 1123(b)(3)(A)-(B). Margaret refers the Court to the discussion of this matter at pages 24, line 20 through page 25, line 24 of her Opposition to Dismiss Amended Complaint, filed herein on February 7, 2019 and urges the Court to adopt Judge Tighe's reasoning in *Cynergy Holdings*, 588 B.R. 82, 98 (Bankr. C.D. Cal. 2018).

#### **IN THE ALTERNATIVE, MARGARET REQUESTS LEAVE TO AMEND**

Alternatively, Margaret respectfully requests leave of Court to again amend her Complaint to add a cause of action for breach of contract, which has a six year statute of limitation. The written contracts at issue would include the common bank account signature cards and policies for bank accounts, a couple of which date back to the 1970s, as well as the investment advisory services and account contracts applicable to Margaret's one real investment account at Wachovia/Wells Fargo. Margaret would allege that Wachovia/Wells Fargo breached their contracts when they incited and enabled serial, unauthorized invasions of her real accounts and her identity by developing and enforcing discredited and double-dealing profit motives and equipped employees with corrupted internal systems. FRCP 15, made applicable here by Bankruptcy Rule 7015, states that permission to amend a complaint should be freely granted "when justice requires." FRCP 15(a)(2). The United States Supreme Court has ruled that "[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman*

1 *v. Davis*, 371 U.S. 178, 182 (1962).

2 **CONCLUSION**

3 Wells Fargo's second Motion To Dismiss should be denied in total and the case move  
4 forward on the merits. Alternatively, leave to amend should be granted for Margaret  
5 to add a breach of contract claim for relief  
6

7 Respectfully submitted this 16th day of February, 2021.

8 CARTLIDGE LAW OFFICE

9 /s/Blaine E. Cartlidge

10 Blaine E. Cartlidge, Esq.

11 WHITE LAW CHARTERED

12 /s/John White

13 John White, Esq.

14 Co-counsel for Plaintiff  
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